the two years—1949 and 1950—in which Winckler made a profit. (R. 752-755, 757-758, 908-913, 2979-2986, 2988-2990, 3051-3067.) These contracts did not guarantee TreeSweet a profit. TreeSweet was obligated to buy all the juice processed under them. The price for the juice was Sunkist's list price at the time of purchase less various discounts and allowances. These provided enough of a margin, so that *if* TreeSweet succeeded in reselling all of the juice at or near the list price it would realize a small profit. (R. 846.)

Sunkist did not set the industry price for by-product oranges. Respondents cite no references to the record for their assertion that Sunkist was the "industry leader." (*Resp. Br.*, 46.) In the Court of Appeals, however, respondents at page 32 of their Supplemental Brief conceded that ". . . The establishing and maintaining of the $40 industry price by appellants [petitioners] throughout the 1951 processing season was not price fixing . . ."

There was no evidence of any fixing by Sunkist of the resale price of juice processed by TreeSweet and Silsbe; and respondents refer to no such evidence. (*Resp. Br.*, 46.) The fact is that the prices for juice charged by California processors were not uniform or alike. (See, *Pet. Br.*, 16.)

Respondents say at pages 14-15 of their brief that, "Petitioners were unable to sell at the $40.00 price any of the approximately 31,000 tons of product oranges they had available in 1951 for processing into single strength orange juice . . . they disposed of that tonnage by making processing contracts with TreeSweet and Silsbe . . ." There was no such evidence; and the refer-

ences to the record given by respondents do not support their assertion. Such evidence as there was on the subject shows that virtually all of Sunkist's 1951 supply was used by it or disposed of to other processors, including but not limited to TreeSweet and Silzle. (R. 594-595, 611-614, 634, 671-676, 685-686, 691-707, 749-751, 2964-2996. Pl. Ex. 72; R. 1959, E531. Def. Ex. FC; R. E545.) Indeed, by the time in 1951 that Winckler requested a processing contract of Sunkist, arrangements had already been made for disposition of the latter's entire supply; and because the crop was not as large as early estimates, deliveries to the processors dealing with Sunkist were being cut back:* (R. 2990-3003.)

CONCLUSION

The judgment of the Court of Appeals, insofar as it affirmed on the issue of liability, should be reversed.

Respectfully submitted,

ROSS C. FISHER,
HERMAN F. SELVIN,
Attorneys for Petitioners.

---

* Incidentally, Winckler's letter of July 16, 1951 which, respondents say, "requested a reply" (*Resp. Br.*, 23), did so only "if you [EOP] are interested . . ." (Pl. Ex. 45; R. 1064, E479.) EOP was not interested and no reply was sent.